IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2006

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THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.NO.21748 OF 2000
AND
W.M.P.NO.31561 OF 2000

M/s.Laser Spectra Technology Pvt. Ltd.
Rep. By its Managing Director K.Ganesan,
354,E.C.Highways,
Sattanathapuram,
Sirkazhi-609 109 .. Petitioner

Vs.

1.The Tamilnadu Industrial Investment
Corporation Limited(TIIC),
rep. By its Chairman and Managing
Director,
No.473, Anna Salai,
Nandanam,
Chennai-35.
2.The Branch Manager,
The Tamilnadu Industrial Investment
Corporation Limited(TIIC),
"Sudhan Towers", I Floor,
358, Public Office Road,
Vellippalayam,
Nagapattinam-611 001 .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records comprised in proceedings No.LAO-I/LEGAL/2000-2001, dated 6.11.2000 and the consequential order in proceedings No.LEGAL/LAO-I/2000-2001, dated 5.12.2000 on the file of the Branch Manager, TIIC, Nagapattinam/second respondent and quash the same and direct the respondents to disburse the undrawn amount of the sanctioned term loan immediately and to reschedule the repayment of loan by providing reasonable time.

For Petitioner : Mr.S.Sounder

For Respondents : Mrs.A.V.Bharathi

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ORDER

The petitioner put an issue an order dated 6.11.2000 issued by the respondent Financial Corporation, informing the petitioner to repay the amount advanced by them and in default, action will be taken under Section 29 of the State Financial Corporation Act and the order, dated 5.12.2000, whereby 7 days time has been granted for payment of arrears amount in a sum of Rs.1,34,00,266.90.

2.The case of the petitioner is that the petitioner applied for a term loan and the same was sanctioned on 30.10.1992 for a sum of Rs.56.60 lakhs and soft loan for a sum of Rs.2.80 lakhs. Though the loan was sanctioned on 30.10.1992, the disbursement of part amount for a sum of Rs.3,10,000/- was paid on 28.4.1993 and there was a delay in getting the power connection to the Industries. Because of the delayed disbursement of loan amount, the petitioner is not able to honour the commitment of repayment and thus, the petitioner alone is not responsible for the delayed payment and the respondent is also equally responsible. The further case of the petitioner is that because of the delayed payment only, the petitioner's project has not been completed and the project has not earned profit.

3.However, the respondents, by filing counter, contended that it is not as if as and when the amount is sanctioned, the amount will be handed over to the petitioner in a golden plate. There are formalities to be followed by the petitioner for getting the amount, such as taking insurance for machinery and building, submitting the approved building plan and bringing their margin money etc. There was no delay on the part of the respondent corporation. All the delays alleged were due to the fault of the petitioner in not complying with the conditions precedent for the disbursement of loan. On that basis, the respondents have issued two orders, which are put in issue in the writ petition.

4.I have heard the learned counsel for the petitioner as well as the respondents and perused the materials on record.

5.It is not disputed that the petitioner has borrowed the amount from the respondent corporation. According to the calculation of the respondent Corporation, as on date, on issuing the notice, which is impugned in the writ petition, a sum of Rs.1,34,00,266.90 was due. The break up figure of principal and interest payable has been given in the impugned notice itself. The liability to repay has not been disputed by the petitioner, but only hardship caused to the petitioner and the loss sustained by the petitioner were stated to be the reasons for the delayed payment, for which there is no material to sustain the case. The issue as to the power of the respondent

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corporation to recover the amount has been considered in detail by the Supreme Court in a case of HARYANA FINANCIAL CORPORATION AND ANOTHER VS. M/S.JAGADAMBA OIL MILLS AND ANOTHER (2002 (1) CTC 503), wherein the earlier judgment of the Supreme Court in Mahesh Chandra Case has been overruled. In the above said decision, the scope of interference of High Court in writ jurisdiction has been categorically settled. While considering Section 29 of the State Financial Corporations Act, the Apex Court has held that the provisions of Section 29 of the Act gives right to financial corporation to sell assets of industrial concern and realise property pledged, mortgaged, hypothecated or assigned to financial corporation. Action taken under this section is not open to challenge unless such actions are mala fide. Even wrong decisions would not enable court to interfere. The court cannot substitute its decision for the decision of financial corporation as Court should not risk their judgments in commercial matters for judgment of bodies to whom that task is assigned. The scope of judicial review in regard to action taken under Section 29 of Act is available in two circumstances, (1) where there is statutory violation on the part of State financial Corporation and (2) Where State Financial Corporation acts unfairly and unreasonably.

6.Having regard to the above said proposition of law made by the Supreme Court, if the facts of the case is being taken into consideration, there is no challenge to the demand made by the respondent on the ground that demand has been made in violation of the statutory provisions or the respondent corporation acted unfairly and unreasonably. In the absence of the above said contention, this Court cannot interfere with the action taken by the respondent corporation. The petitioner has not made out a case to set aside the demand raised by the respondent, as it is undoubtedly the fact that the petitioner has borrowed the amount and the amount borrowed has not been repaid as scheduled and despite the fact the payment schedule has been rescheduled twice latter.

7.In the result, the writ petition is dismissed. There is no order as to costs. Consequently, connected WMP is also dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Chairman and Managing
  Director,
  The Tamilnadu Industrial Investment
   Corporation Limited(TIIC),
  No.473, Anna Salai,
  Nandanam,
  Chennai-35.

2.The Branch Manager,
  The Tamilnadu Industrial Investment
   Corporation Limited(TIIC),
  "Sudhan Towers", I Floor,
  358, Public Office Road,
  Vellippalayam,
  Nagapattinam-611 001

1 cc to Mr.A.V. Bharathi, Advocate, SR.51322

rna (co)

dv/14.11.06

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